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NCAI Update - January 16, 2001 (Broadcast #324)

Land To Trust Regulations Published Today - The Department of Interior, Bureau of Indian Affairs, today released the final regulations revising the procedures for acquiring land in trust status for the benefit of Indian tribes and individuals. (25 C.F.R. 151). These new regulations are of critical concern for Indian Country, and the release of these regulations has been much anticipated. They can be found in the Federal Register for Tuesday, January 16, 2001, Vol. 66, No. 10, Pages 3452-3466, and can be found on the Internet at www.access.gpo.gov The regulations become effective on February 15, 2001.

Land Recovery Task Force to Meet - NCAI established a Land Recovery Task Force to address the proposed regulations. In order to evaluate the final regulations and consider the next steps in their implementation, the NCAI Land Recovery Task Force will have two meetings in Washington, DC during the time of the Presidential Inaugural activities, when many tribal leaders will be present. All tribal leaders and tribal advocates are welcomed to attend. The first meeting will be on January 17, 2001 from 1:00 pm to 5:00 pm at the NCAI offices at 1301 Connecticut Avenue, Suite 200, Washington, DC, and is intended for a detailed review and discussion of the new regulations. The second meeting will be a briefing session for those tribal leaders who are participating in the NIGA Legislative Summit on January 18 and 19. This meeting will take place at 7:30 am at the Hyatt Regency - Crystal City on January 19th.

Retroactive Effect of the New Regulation - A first issue for tribal consideration is the effect of these regulations on current applications for land in trust. Applications that satisfy the definition of a "complete application" will be processed under the previous rule. If it is determined that an application is not complete at the time the rule becomes final, the application will be processed under the new rule. These provisions should be closely reviewed by tribes with pending applications, particularly for off-reservation acquisitions. The new regulations become final on February 15, 2001, so the status of pending applications should be considered an immediate matter.

Brief Summary of New Regulations - An initial review of the final regulations shows several key factors for tribal governments to consider, both positive and negative. The originally proposed regulations (64 Federal Register 17574, 4/12/99) clearly indicated an intent by the Department of Interior to create a more burdensome process for off-reservation acquisitions with greater consideration of the concerns of surrounding non-Indian communities. This intention has been carried forward into the final regulations. While on-reservation acquisitions remain much the same, tribes that do not have a reservation or those that must look outside a reservation boundary to acquire land will face a more difficult process to put land into trust. This will have an effect of placing a heavier burden on many tribes who have suffered extreme loss of tribal lands.

Two other major decisions by the Department of Interior are severely disappointing. First, Interior rejected the strongly-advocated view of tribal leadership that the regulations continue the preference for contiguous land acquisitions. Instead, the new regulations will treat contiguous acquisitions as if they are off-reservation, and adopt a sliding scale approach where proximity to the reservation will weigh in favor of the acquisition. This is not the same as the current regulation's strong preference for contiguous land acquisition to counteract the jurisdictional and management problems caused by a fragmented tribal land base. The second major disappointment is that Interior continued the ban on acquisition of land in trust in Alaska. The preamble to the regulations considers this issue in depth and goes so far as to withdraw the 1978 Solicitor's opinion on which the ban is based, but then faintheartedly maintains the ban, leaving this enormous injustice to stand for the future.

The new regulations contain positive developments as well, particularly in improving the procedures and criteria for processing land to trust applications. First, the regulations establish a time frame for Interior to make a decision. Once an applicant is notified that their application is complete, the BIA will issue a decision within 120 working days. While this may still leave too much room for delay by the Bureau, it is a vast improvement from the current regulations where tribes have waited decades for a decision to be made. Second, and perhaps more importantly, the new regulations establish more definite standards for determining whether or not land should be accepted into trust. These standards are primarily balancing tests of the benefit to the tribe versus the harm to the local government or community. These new standards will have to be carefully reviewed by tribes and tested over time, but tribal leadership pushed strongly for definite standards rather than the unfettered discretion contained in the prior regulations, and it is a positive development to have them in the new regulations.

Many other aspects of these new regulations will have to be carefully reviewed by Indian tribes over the coming weeks and months in order to determine how the regulations will affect each tribe's plans for recovering tribal lands. At the meetings mentioned above, the NCAI Land Recovery Task Force will be engaging in a more detailed evaluation and looking toward the future implementation of the new rule. The Task Force welcomes all tribal leaders and tribal advocates to participate. We also anticipate that the land to trust regulations will be a significant topic of discussion at the NCAI Executive Council Winter Session schedule for February 20-23, 2001.

For more information, please contact NCAI at 202-466-7767.